

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL RODAK, JR., CLERK

October Term 1976

NO. 76-6372

LEON WEBSTER QUILLOIN,

Appellant,

v.

ARDELL WILLIAMS WALCOTT  
and RANDALL WALCOTT,

Appellees.

ON APPEAL FROM THE  
SUPREME COURT OF THE STATE OF GEORGIA

BRIEF OF  
THE STATE OF GEORGIA  
IN SUPPORT OF  
APPELLEE'S MOTION TO DISMISS

ARTHUR K. BOLTON  
Attorney General

ROBERT S. STUBBS, II  
Executive Assistant Attorney General

DON A. LANGHAM  
First Assistant Attorney General

MICHAEL J. BOWERS  
Senior Assistant Attorney General

CAROL ATHA COSGROVE  
Assistant Attorney General

ATTORNEYS FOR THE APPELLEES.

PLEASE ADDRESS ALL  
COMMUNICATIONS TO:

CAROL ATHA COSGROVE  
Assistant Attorney General  
132 State Judicial Building  
Atlanta, Georgia 30334

Telephone: 404/656-3338

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IN THE SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM 1976

No. 76-6372

LEON WEBSTER QUILLOIN,        ]  
                                  ]  
                  Appellant,     ]  
                                  ]  
v.                                 ]  
                                  ]  
ARDELL WILLIAMS WALCOTT        ]  
and RANDALL WALCOTT,            ]  
                                  ]  
                  Appellees.     ]

BRIEF OF THE STATE OF GEORGIA  
IN SUPPORT OF APPELLEE'S  
MOTION TO DISMISS

I. INTRODUCTION

COMES NOW Arthur K. Bolton, Attorney General of the State of Georgia, as Amicus Curiae, and hereby submits a brief pursuant to Rule 42 of the Supreme Court Rules, in Support of Appellee's Motion to dismiss the appeal from the judgment of the Supreme Court of Georgia in the above-styled case on the ground that it does not present a substantial federal question for review by this Court.

II. INTEREST OF AMICUS CURIAE

In the Superior Court of Fulton County, Georgia, Appellant sought, inter alia, a declaratory judgment that Ga. Code § 74-203 and Ga. Laws 1941, p. 300, as amended, [Ga. Code Ann. § 74-403(3)] (each statute hereinafter cited as § 74-203 and § 74-403(3), respectively) were unconstitutional as applied to his case. On appeal to the Supreme Court of Georgia, the thrust of Appellant's enumerations of errors and arguments dealt mainly with the trial court's failure to declare said statutes unconstitutional. A brief for the State as Amicus Curiae was filed in the Supreme

Court of Georgia pursuant to Ga. Laws 1945, pp. 137, 138 (Ga. Code Ann. § 110-1106), which provides that in such actions alleging a State statute to be unconstitutional, the Attorney General shall be served with a copy of the proceedings and shall be entitled to be heard. The brief of the Attorney General of the State of Georgia, as Amicus Curiae, in Support of Appellee's Motion to dismiss the appeal now before this Court is filed pursuant to the instructions set forth in the Clerk's letter of April 13, 1977, and in accordance with the provisions of Rule 42 of the Supreme Court Rules.

III. STATEMENT OF THE CASE

This is an appeal from a decision of the Supreme Court of Georgia which, inter alia, declined to declare unconstitutional § 74-203 and § 74-403(3), as applied to Appellant, a putative father who was attempting to object to the proposed adoption of his illegitimate child by the child's stepfather, after the mother had given her consent to the adoption. Inasmuch as the facts of this case do not appear to be a matter of substantial dispute between the parties, Amicus will, in the interest of brevity, accept the findings of fact as succinctly stated in the trial court's order (R-34-35).

IV. THE CHALLENGED STATUTES

Ga. Code § 74-203 Mother's rights.

"The mother of an illegitimate shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all paternal power."



\*\*\*

(3) Illegitimate children. -- If the child be illegitimate, the consent of the mother alone shall suffice. . . ." Ga. Laws 1941, p. 300, as amended.

#### V. QUESTION PRESENTED

Whether the challenged statutes as applied to Appellant denied him any rights protected by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution?

#### VI. ARGUMENT AND CITATION OF AUTHORITIES

##### Introduction

This case presented issues of first impression in Georgia. The statutes challenged here, § 74-203 and § 74-403(3), clearly state that the mother of an illegitimate child exercises all the parental power over her child, and that she alone may consent to its adoption. Further, the courts of our State have held that the mother's consent cannot be rendered nugatory by the father's subsequent petition to judicially legitimate the child, Smith v. Smith, 224 Ga. 442 (1968), nor even by the subsequent marriage of the mother and the father. Franklin v. English, 126 Ga. App. 400 (1972). Under current<sup>1/</sup> Georgia law, the father of an

<sup>1/</sup> The General Assembly of Georgia has recently passed an Act to comprehensively revise Georgia's entire adoption law, Ga. Laws 1977, p. \_\_\_, (Act No. 85, approved February 27, 1977, attached hereto as Appendix "A"). The new law, which becomes effective January 1, 1978, requires inter alia that putative fathers be given notice of pending adoption proceedings and an opportunity to object by the filing of a petition to legitimate the child within 30 days of the receipt of said notice. Appendix "A", p. 13-14.

illegitimate child has no standing to object to the child's adoption except as a friend of the court to show lack of character and unfitness of the applicants for adoption. Clark v. Buttry, 121 Ga. App. 492, aff'd., 226 Ga. 687 (1970).

The potential invalidity of adoption laws such as Georgia's was raised by Stanley v. Illinois, 405 U.S. 645 (1972) [herein-after cited as Stanley], which Appellant considers to be the leading case for his position (Appellant's Jurisdictional Statement at p. 10). Amicus would not disagree with the limited holding in Stanley, but submits that the Supreme Court of Georgia was correct in distinguishing Stanley from an adoption case such as the one sub judice.

THE CHALLENGED STATUTES AS APPLIED  
TO APPELLANT DID NOT DENY HIM ANY  
RIGHTS PROTECTED BY THE DUE PROCESS  
AND EQUAL PROTECTION CLAUSES OF THE  
UNITED STATES CONSTITUTION.

The Stanley Court was reviewing a state dependency statute which purported to make an illegitimate child a ward of the state upon the death of his mother, and to empower the state to take the child out of the custody of a resident putative father without affording him any notice or opportunity to be heard.<sup>2/</sup> As this Court noted, it was undisputed that Peter Stanley had lived

<sup>2/</sup> This simply could not happen in Georgia. Before a state agency could take a motherless child away from a putative father and place the child for adoption, a proceeding would have to be commenced under the Juvenile Court Code, Ga. Code Ch. 24A. A putative father with custody of his child is clearly entitled to notice and an opportunity to be heard in the hearing on the petition to terminate his parental rights. Ga. Code § 24A-3202. Moreover, in Georgia, unlike Illinois, there is no statutory presumption that such a putative father is unfit to retain custody of his child; on the contrary, juvenile courts are specifically authorized to award custody to putative fathers when such would be in the best interest of the child. Ga. Code §§ 24A-2301 and 24A-3202.

intermittently with the children's mother for eighteen years, that he had lived with the two children whose custody was challenged all their lives, and that he had supported them as a functional father and custodian. Stanley, supra, at 646.

Under those particular, limited circumstances, the Court concluded that

"as a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him and that, by denying him a hearing and extending it to all other parents whose custody of their children is challenged, the State denied Stanley the equal protection of the laws guaranteed by the Fourteenth Amendment."

(Emphasis supplied)

Id., at 649.

Thus, it is apparent that Stanley is a carefully tailored custody opinion and one goes too far to insist that in that decision this Court vested every putative father with rights over the destiny of his illegitimate offspring in the adoption setting. In fact, in one case since Stanley in which this Court has had the opportunity to reconsider the rights of a non-custodial putative father, it refused to automatically rule that he stood in the same position as had Peter Stanley. Rothstein v. Lutheran Social Services, 405 U. S. 1051 (1972).

The Rothstein Court also was presented with a broadly written state statute which declared that a putative father had no rights to notice or to be heard in Wisconsin termination proceedings. As in Stanley, there was no question but that the trial court knew of this putative father's existence, was aware

of his acknowledgement of paternity, and was apprised of his asserted claim to custody; nevertheless, he was denied a hearing after the mother's rights had been terminated and the child placed with prospective adoptive parents. State ex rel. Lewis v. Lutheran Social Services, 47 Wis.2d 420, 178 N.W.2d 56 (1970).

The Wisconsin judgment was vacated by this Court and remanded for further consideration in light of its decision in Stanley, but "with due consideration for the completion of the adoption proceedings and the fact that the child has apparently lived with the adoptive family for the intervening period of time." Rothstein, supra. (Emphasis supplied). Thus, by the explicit terms of this order handed down subsequent to Stanley, this Court has indicated that there are factually distinguishable cases within the broad class of putative fathers and specifically pointed to the interest of the child eligible for adoption as a factor to be weighed in the judicial balance.

Of greatest importance to the consideration of the issues presented in the instant case, however, is this Court's recent dismissal "for want of a substantial federal question" of an appeal from the New York Court of Appeals which upheld the constitutionality of an adoption statute dispensing with the consent of a father of an illegitimate child despite the fact that he had lived with the mother and child for two years, had admitted paternity in an affiliation proceeding, had been ordered to pay child support, and had apparently complied to some extent with that order. In re Adoption of Malpica-Orsini, 36 N.Y.2d 568, 370 N.Y.S.2d 511, 331 N.E.2d 486 (1975), appeal dismissed, 96 S.Ct. 765 (1976) [this case is also sometimes cited as Orsini v. Blasi, and will be hereinafter referred to as Orsini]. In Orsini



as in the present case, the father of an illegitimate child was appealing from a decree of adoption granted to a man whom the natural mother had subsequently married. Although under the New York statute no notice of adoption proceedings was required to be given to the putative father, the trial court accorded Orsini a full hearing with representation by counsel; therefore, the appellate court held that he had not been denied due process. Orsini, supra, 36 N.Y.2d at 576. The same rights were given to Appellant in the present case; thus, by the same rationale, due process was not lacking here.

In Orsini, the court emphasized the great benefits of adoption of an out-of-wedlock child from a child-welfare standpoint, and took heed of the apprehension of experts about the effect on adoptions of "the new legalities" engendered by unwed fathers to their children, the New York court concluded that beneficial adoptions would be prevented "or at the very least...severely impeded" if unwed fathers were to have the same veto power over the adoption of their children as wed fathers. Id., at 572.

As the Orsini court recognized in its discussion of equal protection, there is nothing in the precedents of this Court to suggest that a state is powerless to distinguish among fathers in its statutory classification scheme in the area of adoption. Id., at 574. Although Appellant has cited the companion cases of Glon v. American Guarantee & Liab. Ins. Co., 319 U.S. 73 (1968) and Levy v. Louisiana, 391 U.S. 68 (1968) [Appellant's Jurisdictional Statement at p. 6], Amicus would point out that subsequent

decisions, serving to clarify this Court's attitude toward classifications based on illegitimacy, indicate (1) that the "rational basis" test is to be used in judging such statutes, and (2) that they will only be struck down when the State has created an insurmountable barrier based solely on illegitimacy. See, Matthews v. Lucas, \_\_\_ U.S. \_\_\_ (44 U.S.L.W. 5139, June 29, 1976); Weber v. Aetna Casualty and Surety Co., 406 U.S. 164 (1972); Labine v. Vincent, 401 U.S. 532 (1970) [hereinafter cited as Labine]. As the Labine Court explained in discussing Louisiana's intestate succession laws:

"We emphasize that this is not a case, like Levy, where the State has created an insurmountable barrier to this illegitimate child. There is not the slightest suggestion in this case that Louisiana has barred this illegitimate from inheriting from her father. Ezra Vincent could have left one-third of his property to his illegitimate daughter had he bothered to follow the simple formalities of executing a will. He could, of course, have legitimated the child by marrying her mother in which case the child could have inherited his property either by intestate succession or by a will as any other legitimate child. Finally, he could have awarded his child the benefits of Louisiana's intestate succession statute on the same terms as legitimate children simply by stating in his acknowledgment of paternity his desire to legitimate the little girl."

Labine, supra, at 539.

Amicus would respectfully submit that, just as in Labine, the Georgia statutory adoption scheme presents no insurmountable barrier to an unwed father such as Appellant. Appellant could have married the child's mother after its birth and his recognition of the child as his would have rendered it legitimate. Ga. Code § 74-101. Or, he could legitimate the child through court proceedings pursuant to Ga. Code § 74-103. Appellant had these options available to him, but chose not to exercise them. Instead, he allowed his child to be branded illegitimate throughout its entire eleven-year life, and only became concerned with "legalities" in a last-minute effort to thwart an adoption which would give the child a sense of permanence in the loving, stable home established by the mother and stepfather.

The public policy considerations which weigh against actions such as Appellant's, and in favor of final adoptive placements of illegitimate children are enormous. The best compendium of these policy implications is found, again, in Orsini:

"Illegitimacy and family breakdown have become problems on an unprecedented scale in modern industrial society. Never before have there been so many thousands of children for whom society finds each year that it must make some provision.

To require the consent of fathers of children born out-of-wedlock, or even some of them, would have the overall effect of denying homes to the homeless and depriving innocent children of the other blessings of adoption. The cruel and undeserved out-of-wedlock stigma would continue its visitations.

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Couples considering adoption will be dissuaded out of fear of subsequent annoyance and entanglements . . . . The burden on charitable agencies will be oppressive. . . . Institutions such as foundling homes which nurture the children for months could not afford to continue their maintenance, in itself not the most desirable, . . . if wards [are] unplaceable. These philanthropic agencies would be reluctant to take infants, for no one wants to bargain for trouble in an already tense situation. The drain on the public treasury would also be immeasurably greater in regard to infants placed in foster homes and public agencies.

Some of the ugliest disclosures of our time involve black marketing of children for adoption. One need not be a clairvoyant to predict that the grant to unwed fathers of the right to veto adoptions will provide a very fertile field for extortion.... While it may appear, at first blush, that a father might wish to free himself of the burden of support, there will be many who will interpret it as a chance for revenge or an opportunity to recoup their 'losses.'

Marriages would be discouraged because of the reluctance of prospective husbands to involve themselves in a family situation where they might only be a foster parent and could not adopt the mother's offspring."

Orsini, supra, at 573-74.



Amicus would submit that these and other similar policy considerations, well within the contemplation of the Georgia General Assembly, form more than an adequate rational basis for whatever slight "discrimination" the adoption statutes may work against a man who deliberately chooses not to legitimate his offspring. Indeed, judged by an even stricter standard, the child's welfare should be considered by the State as the one "powerful countervailing interest" mentioned in Stanley, supra, at 651, which would always offset the father's private interests.

It is undoubtedly true that Stanley has engendered more than a little confusion in the courts of this land. Some post-Stanley and pre-Orsini decisions routinely applied the Stanley custody rationale to the adoption setting, whereas others were more careful to qualify its applicability. See, e.g., Miller v. Miller, 504 F.2d 1067 (9th Cir. 1974); Catholic Charities v. Zalesky, 232 N.W.2d 539 (Iowa, 1975); In re M., 321 A.2d 19 (Vermont, 1974); State ex rel. Lewis v. Lutheran Social Services, 207 N.W.2d 286 (Wisc. 1973); People ex rel. Slawek v. Covenant Children's Home, 284 N.E.2d 291 (Ill., 1972).

Now, however, this Court's dismissal of Orsini on the stated grounds so limits Stanley that the latter case can no longer be deemed controlling in adoption cases. Amicus is of the firm conviction that putative fathers already have available to them ample opportunity to protect their paternal interests under Georgia law, and that to strike the statutes challenged here would only be to condemn thousands of innocent children to the anguished limbo of unadoptability.

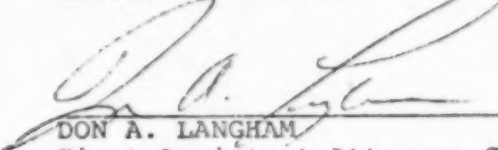
## CONCLUSION

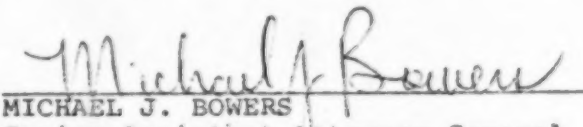
The statutes challenged herein clearly rest upon a rational policy basis and the Georgia Supreme Court was correct in holding that their application to Appellant's case did not violate any of his rights protected by the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution. Therefore, we ask this Honorable Court to dismiss the appeal from the judgment below.

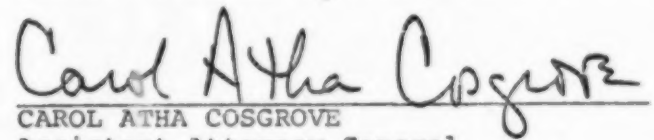
Respectfully submitted,

ARTHUR K. BOLTON  
Attorney General

ROBERT S. STUBBS, II  
Executive Assistant Attorney General

  
DON A. LANGHAM  
First Assistant Attorney General

  
MICHAEL J. BOWERS  
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CAROL ATHA COSGROVE  
Assistant Attorney General

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Assistant Attorney General  
132 State Judicial Building  
Atlanta, Georgia 30334

Telephone: 404/656-3338



# ENROLLMENT

*February 24, 1977*  
The Committee of the Senate on Enrolling and Journals has examined the within and finds the same properly enrolled.

*Edward H. Johnson*  
Chairman

*Joe Miller*  
President of the Senate

*Hamilton M. Whorters*  
Secretary of the Senate

*Thomas Murphy*  
Speaker of the House

*Steve Wood*  
Clerk of the House

Received *Ann L. Underwood*  
Secretary, Executive Department

This *25<sup>th</sup>* day of *February* 19*77*

Approved *George Busbee*  
Governor

This *25<sup>th</sup>* day of *February* 19*77*

S. B. No. 18 Act No. 85

## General Assembly



### AN ACT

To revise the adoption laws of this State; to provide for jurisdiction and venue in adoption proceedings; to define who may adopt children; to require surrender or termination of parental rights prior to adoption except in certain cases; to set forth the requirements and form of a surrender of parental rights; and for other purposes.

#### IN SENATE

Read 1st time Jan. 11, 1977

Read 2nd time Jan. 14, 1977

Read 3rd time Jan. 17, 1977

And Passed

Yeas 47

Nays 2

*Hamilton M. Whorters*  
Secretary of the Senate

#### IN HOUSE

Read 1st time Jan. 18, 1977

Read 2nd time Jan. 31, 1977

Read 3rd time Feb. 8, 1977

And Passed

Yeas 169

Nays 1

*Steve Wood*  
Clerk of the House

By: Senators Shapard of the 28th, Howard of the 42nd, Banks of the 17th and others

### AN ACT

To comprehensively revise the adoption laws of this State; to provide for jurisdiction and venue in adoption proceedings; to define who may adopt children; to require surrender or termination of parental rights prior to adoption except in certain cases; to set forth the requirements and form of a surrender of parental rights; to require that in certain cases notice be given to the putative father of a child to be adopted; to specify the contents of an adoption petition; to require an accounting report of petitioner and his attorney; to provide for the date of the final hearing and service; to require an investigation report for certain adoptions; to allow objections to the adoption by relatives in certain situations; to allow for the appointment of a guardian ad litem; to establish procedures for hearing an adoption petition; to establish the effect of a decree of adoption; to provide for notice of the adoption; to provide for the adoption of adult persons; to establish the effect of a foreign judgment of adoption; to provide for the secrecy of adoption records; to provide penalties for illegal advertising of adoptions and illegal advertisements for persons to place their child for adoption; to provide penalties for illegal inducements for persons to place their child for adoption; to provide for severability; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. The Code of Georgia is hereby amended by striking Code Chapter 74-4 in its entirety and substituting in lieu thereof the following new Code Chapter 74-4 and to read as follows:

"CHAPTER 74-4 ADOPTION

SECTION 74-401 JURISDICTION AND VENUE.

The superior courts of the several counties shall have exclusive jurisdiction in all matters of adoption, except such jurisdiction as may be granted to the juvenile courts. All petitions for adoption shall be filed in the county in which the adopting parent(s) resides, except that upon good cause being shown, the court of the county of the child's domicile or of the county in which is located any licensed child-placing agency having legal custody of the child sought to be adopted may, in its discretion, allow the petition to be filed in that court.

SECTION 74-402 WHO MAY ADOPT.

Any adult person may petition for leave to adopt a child if such person is (1) at least twenty-five (25) years of age, or (2) married and living with husband or wife. If a person is married, the petition must be filed in the name of both husband and wife, except where the child is the stepchild of the party seeking to adopt, in which event the petition may be filed by the stepparent alone. The petitioner(s) must be at least ten (10) years older than the child, a resident of this State and financially, physically, morally fit and mentally able to have the permanent custody of the child.

SECTION 74-403 SURRENDER OR TERMINATION OF PARENTAL RIGHTS REQUIRED.

(a) Except as otherwise specified in Code Section 74-405, no adoption of a child with a living parent(s)

or guardian(s) of his person shall be permitted except where (1) the parent(s) or the guardian(s) of the child has voluntarily and in writing surrendered all of his rights to the child to the Department of Human Resources or a licensed child-placing agency or the parent(s) or the guardian(s) of the child has had his rights terminated by order of a court of competent jurisdiction and the child has been committed by said court to the Department of Human Resources or a licensed child-placing agency for placement for adoption and the Department or agency thereafter consents to the adoption; or (2) the parent(s) or the guardian(s) of the child has voluntarily and in writing surrendered all of his rights to the child to a third person(s) for the purpose of enabling that person(s) to adopt said child; or (3) a parent of the child has voluntarily and in writing surrendered all of his rights to the child to the spouse of the other parent of said child and such other parent, if living, consents to the adoption; or (4) the parent(s) of the child has voluntarily and in writing surrendered all of his rights to the child to a relative who is either a parent, brother or sister, aunt or uncle, or son or daughter of either parent; or (5) where a child has been placed for adoption by a juvenile court, or other court of competent jurisdiction, which has terminated the parental rights of the parents.

(b) A petition for adoption pursuant to Code Section 74-403(a)(2) shall be filed within sixty (60) days from the date of the surrender; otherwise, except in cases of excusable neglect, said surrender shall operate in favor of the Department of Human Resources for placement for adoption pursuant to Code Section 74-403(a)(1).

(c) In the case of a child fourteen (14) years of



age, or older, the written consent of the child must be given or acknowledged in the presence of the court.

#### SECTION 74-404 SURRENDER OF PARENTAL RIGHTS.

(a) The surrender to the Department of Human Resources or a licensed child-placing agency specified in Code Section 74-403(a)(1) shall be executed following the birth of the child in the presence of a representative of the Department or agency and a notary. A surrender pursuant to subsection (a)(2), (3) or (4) of Code Section 74-403 shall be executed following the birth of the child in the presence of a notary. A copy shall be delivered to the parent(s) or guardian(s) signing such surrender at the time of the execution thereof. In the case of a surrender pursuant to Code Section 74-403(a)(2) the name and address of the person(s) to whom the child is surrendered may be omitted to protect confidentiality provided the surrender sets forth the name and address of his agent for purposes of notice of withdrawal as provided for in Code Section 74-404(b).

(b) A parent or guardian signing a surrender shall have the right to withdraw the surrender by written notice within ten (10) days after signing and the surrender document shall not be valid unless it so states. Thereafter a surrender may not be withdrawn. The notice of withdrawal of surrender shall be delivered in person or by registered mail to the person or agency, at the address designated in the surrender document.

(c) (1) The surrender as specified in Code Section 74-403(a)(1), (3) or (4) shall conform substantially to the following:

#### SURRENDER OF PARENTAL RIGHTS

#### FINAL RELEASE FOR ADOPTION

NOTICE TO PARENT OR GUARDIAN: \_\_\_\_\_

This is an important legal document and by signing it you are surrendering all of your right, title and claim to the child named herein, so as to facilitate the child's placement for adoption. You are to receive a copy of this document and as explained below have the right to withdraw your surrender within ten (10) days from the date you sign it.

\_\_\_\_\_  
I, the undersigned, being solicitous that my (male) (female) child, born \_\_\_\_\_, and now \_\_\_\_\_ (days) (weeks) (months) (years) old, should receive the benefits and advantages of a good home, to the end that (she) (he) may be fitted for the requirements of life, consent to this surrender.

I, the undersigned, (insert relationship to child) of the aforesaid child do hereby surrender said child to (insert name of child-placing agency, stepparent or relative) and promise not to interfere in the management of said child in any respect whatever, and in consideration of the benefits guaranteed by (insert name of child-placing agency, stepparent or relative) in thus providing for said child, I do relinquish all rights, title and claim to the child herein named, it being my wish, intent and purpose to relinquish absolutely all parental control over said child.

[Optional paragraph to be used  
with child-placing agency]

Furthermore, I hereby agree that said (insert name of child-placing agency) may seek for said child a legal adoption by such person or persons as may be chosen by said (insert name of child-placing agency) or its authorized agents without further notice to me. I do, furthermore, expressly waive any other notice or service

in any of the legal proceedings for the adoption of said child.

[Optional paragraph to be used in  
case of stepparent or relative  
adoption]

Furthermore, I hereby agree that said (insert name of stepparent or relative) may initiate legal proceedings for the legal adoption of said child without further notice to me. I do, furthermore, expressly waive any other notice or service in any of the legal proceedings for the adoption of said child.

Furthermore, I hereby certify that I have received a copy of this document and that I understand I may only withdraw this surrender by giving written notice, delivered in person or by registered mail, to (insert name and address of child-placing agency, stepparent or relative) within ten (10) days from the date hereof; and I understand that it may NOT be withdrawn thereafter.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this surrender document, and do so freely and voluntarily.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Parent or guardian) (SEAL)

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

(2) The surrender as specified in Code Section 74-403(a)(2) shall conform substantially to the following:

# FINAL RELEASE FOR ADOPTION

## NOTICE TO PARENT OR GUARDIAN:

This is an important legal document and by signing it you are surrendering all of your right, title and claim to the child named herein, so as to facilitate the child's placement for adoption. You are entitled to receive a copy of this document and as explained below have the right to withdraw your surrender within ten (10) days from the date you sign it.

\_\_\_\_\_  
I, the undersigned, being solicitous that my (male) (female) child, born \_\_\_\_\_, and now \_\_\_\_\_ (days) (weeks) (months) (years) old, should receive the benefits and advantages of a good home, to the end that (she) (he) may be fitted for the requirements of life, consent to this surrender.

I, the undersigned, (insert relationship to child) of the aforesaid child do hereby surrender said child to (insert name of person(s) desiring to adopt said child), PROVIDED such person(s) files a petition for adoption of said child in accordance with the provisions of Georgia Code Chapter 74-4 within sixty (60) days from the date hereof. Furthermore, I promise not to interfere in the management of said child in any respect whatever, and in consideration of the benefits guaranteed by said person(s) in thus providing for said child, I do relinquish all right, title and claim to the child herein named, it being my wish, intent and purpose to relinquish absolutely all parental control over said child.

It is also my wish, intent and purpose that if such person(s) fails to file a petition for adoption as



provided for above within said sixty-day period, other than for excusable neglect, then I do hereby surrender said child to the Department of Human Resources for placement for adoption and said Department of Human Resources may petition the Superior Court for custody of said child in accordance with the terms of this surrender.

Furthermore, I hereby agree that said child is to be adopted either by the person(s) named above or by such person(s) as may be chosen by said Department of Human Resources and I do expressly waive any other notice or service in any of the legal proceedings for the adoption of said child.

Furthermore, I hereby certify that I have received a copy of this document and that I understand I may only withdraw this surrender by giving written notice, delivered in person or by registered mail, to (insert name and address of agent of person(s) desiring to adopt said child) within ten (10) days from the date hereof; and I understand that it may NOT be withdrawn thereafter.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this surrender document, and do so freely and voluntarily.

Witness my hand and seal this \_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Parent or Guardian) (SEAL)

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

(3) Whenever parental rights are surrendered to

the Department of Human Resources or a licensed child-placing agency, the agency representative before whom the surrender is signed shall execute an affidavit in substantially the following form:

AFFIDAVIT OF AGENCY REPRESENTATIVE

Personally appeared before me, the undersigned officer duly authorized to administer oaths, \_\_\_\_\_, who, after having been sworn, deposes and says as follows:

That I am \_\_\_\_\_ (position) \_\_\_\_\_ of \_\_\_\_\_  
(Department or agency)

Prior to the execution of the accompanying SURRENDER OF PARENTAL RIGHTS/FINAL RELEASE FOR ADOPTION by \_\_\_\_\_ (hereinafter referred to as "parent"), releasing and surrendering all of (his)(her) rights in a (male)(female) minor child born \_\_\_\_\_, I reviewed with and explained to the parent all of the provisions of the surrender, and particularly the provisions which provide that said surrender is a full surrender of all parental rights.

Based on my review and explanation to said parent, it is my opinion that the parent knowingly, intentionally, freely and voluntarily executed the surrender of parental rights.

\_\_\_\_\_  
(Agency representative)

Sworn to and subscribed before  
me this \_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(4) A surrender of parental rights shall be acknowledged by the parent(s) or guardian(s) signing in substantially the following form:

ACKNOWLEDGMENT OF SURRENDER

OF PARENTAL RIGHTS

By execution of this paragraph, the undersigned expressly acknowledges: (1) that I have read the accompanying SURRENDER OF PARENTAL RIGHTS/FINAL RELEASE FOR ADOPTION to my minor child born \_\_\_\_\_, a (female)(male); (2) that I understand that this is a full, final and complete surrender, release and termination of all of my rights to said child; (3) that I have the unconditional right to revoke said surrender by giving written notice, delivered in person or by registered mail, to (insert name and address) not later than ten days from the date of the surrender and that after such ten-day period I shall have no right to revoke the surrender; (4) that I have read the accompanying surrender and received a copy thereof; (5) that any and all questions regarding the effect of said surrender and its provisions have been satisfactorily explained to me; (6) that I have been afforded an opportunity to consult with counsel of my choice prior to execution of the surrender; and (7) that the surrender of my rights has been knowingly, intentionally, freely and voluntarily made by me.

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(parent or guardian) (SEAL)

(5) Whenever the biological mother surrenders her parental rights she shall execute an affidavit as to the identity and location of the putative father in substantially the following form:

MOTHER'S AFFIDAVIT  
REGARDING PUTATIVE FATHER

NOTICE TO MOTHER:

This is an important legal document which deals with your child's right to have its biological father's rights properly terminated. You have the right not to disclose the name and address of the father of your child. Understand that you are providing this affidavit under oath and that the information provided will be held in strict confidence and will be used only in connection with the adoption of your child.

Personally appeared before me, the undersigned officer duly authorized to administer oaths, \_\_\_\_\_, who, after having been sworn, deposes and says as follows:

That I am the mother of a (male) (female) minor child born \_\_\_\_\_.

That the name of the biological father of my child is \_\_\_\_\_,  
and his last known address is \_\_\_\_\_.

Sworn to and subscribed  
before me this \_\_\_\_\_  
day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public.

(d) A surrender, when required, may be given by the parent(s) of the child sought to be adopted irrespective of whether such parent, or either, or both of them have arrived at the age of majority. The surrender given by such minor parent(s) shall be binding



upon him as if such parent(s) were in all respects sui juris.

(c) A copy of the surrender specified in Code Section 74-404(c)(2) together with a copy of the affidavit specified in Code Section 74-404(c)(5) and the name and address of the person(s) to whom the child is surrendered shall be mailed, by registered or certified mail, return receipt requested, by said person(s) to the Adoption Supervisor, Georgia Department of Human Resources, Atlanta, Georgia 30334, within fifteen (15) days from the execution thereof. Upon receipt of said copy the Department of Human Resources may commence its investigation as required in Code Section 74-409.

SECTION 74-405 SURRENDER OR TERMINATION OF  
PARENTAL RIGHTS NOT REQUIRED.

(a) Surrender or termination of parental rights as provided in Code Section 74-403 shall not be required as a prerequisite to adoption pursuant to subsections (a)(1), (a)(2), (a)(3) or (a)(4) of Code Section 74-403 where a child has been abandoned by a parent, or where such parent of a child cannot be found after a diligent search has been made, or where such parent is insane or otherwise incapacitated from surrendering such rights and the court is of the opinion that the adoption is for the best interest of the child, nor shall a surrender or termination of parental rights as provided in Code Section 74-403 be required as a prerequisite to adoption pursuant to subsections (a)(3) or (a)(4) of Code Section 74-403 in the case of a parent who has failed significantly without justifiable cause for a period of one year or longer immediately prior to the filing of the petition for adoption

(1) to communicate, or to make a bona fide attempt to communicate with the child, or

(2) to provide for the care and support of the child as required by law or judicial decree.

(b) Whenever it is alleged that surrender or termination of parental rights is unnecessary because of subsection (a), the allegedly defaulting parent(s) shall be personally served with the adoption petition or, if personal service cannot be perfected, by registered or certified mail, return receipt requested, at his last known address. If service cannot be made by either of these methods, the parent(s) shall be given notice by publication once a week for three weeks in the official organ of the county where the petition has been filed.

SECTION 74-406 NOTICE TO PUTATIVE FATHER.

(a) If the identity and location of the putative father of an illegitimate or legitimate child is known or reasonably ascertainable and he has not executed a surrender as provided in Code Section 74-404(c), then he shall be notified of the mother's surrender or her consent to the child's adoption by her husband, or the proceeding to terminate her parental rights by registered or certified mail, return receipt requested, at his last known address.

(b) If the identity and location, or either, of the putative father of an illegitimate or legitimate child is not known or reasonably ascertainable then upon motion by either the petitioner(s), Department of Human Resources, or licensed child-placing agency the Court, as soon as practicable, shall make such inquiry as it deems appropriate under the circumstances and shall determine whether the identity and location of the putative father is ascertainable, and whether the putative father lived with the child, contributed to its support, or has given any other tangible indication of interest in the child, so as to entitle him to notice of

the mother's surrender or her consent to the child's adoption by her husband, or the proceeding to terminate. If the Court identifies the putative father and determines that he is entitled to notice of the mother's surrender or the proceeding to terminate her parental rights it shall enter an appropriate order designed to afford him such notice. If after inquiry the Court is unable to identify the putative father or concludes that he is not entitled to notice of the mother's surrender or her consent to the child's adoption by her husband, or the proceeding to terminate her parental rights the Court shall enter an order terminating the putative father's rights with reference to the child.

(c) When notice is to be given pursuant to subsection (a) or (b) above, it shall advise the putative father that he loses all rights to the child and will neither receive notice nor be entitled to object to the adoption of the child unless he files (1) a petition to legitimate the child pursuant to Code Section 74-103, and (2) notice of such petition to legitimate with the court in which the adoption is pending, within thirty (30) days of receipt of such notice.

(d) If a legitimation petition is not filed by the putative father and notice given as required in subsection (c) above within thirty (30) days of his receipt of notice, as provided for in subsection (a) or (b) above, or if after filing such petition, he fails to prosecute it to final judgment he loses all rights to the child and he may not thereafter object to the adoption and is not entitled to receive notice of the adoption.

(e) If the child is legitimated by the putative father, the adoption shall not be permitted except as

provided in Code Sections 74-403 through 405.

#### SECTION 74-407 PETITION AND CONTENTS.

(a) The petition, duly verified, together with two (2) conformed copies thereof, must be filed with the clerk of the superior court having jurisdiction, and shall set forth the name, age and place of the residence of the petitioner(s); the name by which the child is to be known should the adoption ultimately be completed; the date of birth and sex of the child; the date and circumstances of the placement of the child with petitioner(s); whether such child is possessed of any property and, if so, a full and complete description thereof; whether the child has one or both parents living; or whether the child has a guardian of its person. Where the adoption is pursuant to Code Section 74-403(a) (1), an affidavit from the Department of Human Resources or a licensed child-placing agency shall be provided (or attached) when the petition is filed stating that all provisions of Code Sections 74-403(a)(1), 74-404 and 74-406, if applicable, have been complied with along with the written consent of said Department or agency to the adoption. Where the adoption is pursuant to Code Section 74-403(a)(2) the written voluntary surrender of such parent(s) or guardian(s), specified in Code Section 74-404(c)(2), together with the affidavit specified in Code Section 74-404(c)(5), shall be provided (or attached) when the petition is filed together with allegations of compliance with the provisions of Code Section 74-406, if applicable. Where the adoption is pursuant to Code Section 74-403(a)(3) or (4) the written voluntary surrender of such parent(s), specified in Code Section 74-404(c)(1), together with the affidavit specified in Code Section 74-404(c)(5), shall be provided (or



attached) when the petition is filed together with allegations of compliance with provisions of Code Section 74-406, if applicable. Where Code Section 74-405 is applicable, the parental rights need not be surrendered or terminated prior to the filing of the petition but petitioner(s) shall allege facts demonstrating the applicability of Code Section 74-405 and allege compliance with Code Section 74-405(b). If the petition is filed in a county other than that of the petitioner's residence, the reason therefor must also be set forth in the petition. At the time of filing the petition, the petitioner(s) shall deposit with the clerk the deposit required by Code Section 24-3406, as amended, and the fees shall be those established by Code Section 24-2727, as amended.

(b) Except as specified in subsection (c), the petitioner(s) in any proceeding for the adoption of a minor shall file, with the petition, a full accounting report in a manner acceptable to the court of all disbursements of anything of value made or agreed to be made directly or indirectly, by, on behalf or for the benefit of the petitioner(s) in connection with the adoption. The report shall show any expenses incurred in connection with:

- (1) The birth of the minor;
- (2) Placement of the minor with petitioner(s);
- (3) Medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement; and
- (4) Services relating to the adoption or to the placement of the minor for adoption which were received by or on behalf of the petitioner(s), either natural parent of the minor, or any other

person.

(c) Subsection (b) does not apply to an adoption pursuant to Code Section 74-403(a)(1), (3) or (4).

(d) Every attorney for the petitioner(s) in any proceeding for the adoption of a minor wherein the petitioner(s) is required to file an accounting under the provisions of subsection (b), shall file, before the decree of adoption is entered, an affidavit in a manner acceptable to the court of all sums paid or promised him, from whatever source, for all services rendered or to be rendered (regardless of their nature) in connection with the adoption. Provided however, that if the attorney received less than five hundred dollars his affidavit need only state that fact.

(e) Any report made under this Section must be signed and verified by the individual making such report.

#### SECTION 74-408 NOTICE OF DATE OF HEARING; SERVICE.

Upon filing of the petition, the court shall fix a date upon which the petition for adoption shall be considered which shall be not less than sixty (60) days from the date of filing of the petition. A copy of the petition, order fixing the date upon which the petition shall be considered, and copies of all exhibits, surrenders or certificates, as required by this Code Chapter, shall be forwarded by the clerk to the Department of Human Resources within fifteen (15) days after the filing of the petition for adoption, together with a request that a report and investigation be made as required by law.

#### SECTION 74-409 INVESTIGATION BY DEPARTMENT OF HUMAN RESOURCES OR OTHER AGENCY.

(a) Prior to the date set by the court for a

hearing on the petition for adoption, it shall be the duty of the Department of Human Resources through its own agents, one of its licensed child-placing agencies, or through any other agency appointed by the Department of Human Resources, to verify the allegations in the petition for adoption and to make a complete and thorough investigation of the entire matter, and to report its findings and recommendations in writing to the court where the petition for adoption was filed. If for any reason the Department of Human Resources shall find itself unable to make or arrange for the proper investigation and report, it shall be the duty of the Commissioner of the Department to notify the court immediately, or at least within twenty (20) days after receipt of the request for investigation service, that it is unable to make such report and investigation so that the court may take such other steps as in its discretion are necessary to have the entire matter investigated.

(b) If the petition has been filed pursuant to Code Section 74-403(a)(3) or (4), the Department of Human Resources is authorized but not required to make an investigation and shall do so whenever requested by the court, in whatever form the court specifies.

#### SECTION 74-410 REPORT AND RECOMMENDATION.

(a) The report and findings of the investigating agency shall, among other things, include the following:

(1) Verification of allegations contained in the petition.

(2) Circumstances under which the child came to be placed for adoption.

(3) Whether the proposed adoptive parent(s) is financially (including adoption supplement if approved by the Department of Human Resources),

physically and mentally able to have the permanent custody of the child.

(4) The physical and mental condition of the child to be adopted insofar as this can be determined by the aid of competent medical authority.

(5) Whether or not the adoption is for the best interests of the child, including general care.

(6) Suitability of the home to the child.

(7) Whether the identity and location of a putative father is known, or ascertainable and whether the requirements of Code Section 74-406 were complied with, if applicable.

(8) Any other information that might be disclosed by the investigation that would be of any value or interest to the court in deciding the case.

(b) If the report of the Department of Human Resources or the licensed child-placing agency as provided herein, disapproves of the adoption of the child, motion may be made by said Department or by the licensed child-placing agency to the court to dismiss the petition, and the court after hearing is authorized to do so. If the court denies the motion to dismiss, the court shall appoint a guardian ad litem who may appeal such ruling to the Court of Appeals or Supreme Court, as in other cases; as now or hereafter provided by law.

(c) If at any time it appears to the court that the interests of the child may conflict with those of the petitioner(s), the court may, in its discretion, appoint a guardian ad litem to represent the child and the cost thereof shall be a charge upon the funds of the



county.

(d) If the petition is denied, the court shall remand the child to the custody of the Department of Human Resources or licensed child-placing agency if the adoption petition was filed pursuant to subsection (1) or (2) of Code Section 74-403(a). If the adoption petition was filed pursuant to subsection (3) or (4) of Code Section 74-403(a), the child shall remain in the custody of petitioner(s) if he is fit to have custody or the court may place the child with the Department of Human Resources for the purpose of determining whether or not a petition should be initiated under the Juvenile Court Code of Georgia.

SECTION 74-411 OBJECTION BY RELATIVE TO PETITION  
FOR ADOPTION.

It shall be the privilege of any person related by blood to the child sought to be adopted, if there is no father or mother living, to file objections to the petition for adoption, and the court, after hearing the same, shall determine, in its discretion, whether or not the same constitute a good reason for denying the petition.

SECTION 74-412 HEARING AND DECREE OF  
ADOPTION.

(a) (1) Upon the date appointed by the court for a hearing of the petition for adoption, or as soon thereafter as the matter may be reached for a hearing, the court shall proceed to a full hearing on the petition and the examination of the parties at interest in chambers, under oath, with the right of continuing the hearing and examinations from time to time as the nature of the case may require. The court at such times shall give consideration to the investigation report to the court provided for

in Code Section 74-409 and the recommendations therein contained.

(2) If the court determines from the report or otherwise that the identity and location of the putative father of an illegitimate or legitimate child have been ascertained or are ascertainable and that he is entitled to notice as provided in Code Section 74-406 and has not received such notice, the court shall within five (5) days following such hearing cause the notice requirement of Code Section 74-406 to be satisfied. The hearing shall be continued for at least thirty (30) days following notice to the putative father to allow him to legitimate the child or to surrender all his rights to said child. If the putative father files a petition to legitimate the child within such thirty-day period, the court shall fix a time for a hearing thereon which shall not be later than thirty (30) days from the date of filing of said petition. If a petition to legitimate the child is not filed within thirty (30) days following receipt of notice, or if the petition is not prosecuted to final judgment, such failure shall constitute the surrender by the putative father of all his rights to said child as provided in Code Section 74-406(d) and the court shall proceed with the final hearing on the petition for adoption. If the child is legitimated by the putative father, the adoption shall not be permitted except as provided in Code Sections 74-403 through 405.

(b) If the court is satisfied that the parent(s) or guardian(s) of the child has been relieved of the care, support and guardianship and all rights to said

child in the manner provided by law and that the petitioner(s) is capable of assuming responsibility for the care, supervision, training and education of the child, and that the child is suitable for adoption in a private family home and that the adoption requested is for the best interests of the child, it shall enter a decree of adoption, granting the permanent custody of the child to the petitioner(s), and declaring said child to be the adopted child of the petitioner(s).

(c) If the court shall determine that the petitioner(s) has not complied with the provisions of this Code Chapter, it may dismiss the petition for adoption without prejudice or continue the cause. Should the court find that any notice required under this Chapter to be given by the petitioner has not been given or not properly given, or that said petition has not been properly filed, then said court is authorized to enter an order providing for corrective action and an additional hearing.

(d) If the court is not satisfied that the adoption is for the best interests of the child, it shall deny the petition and commit the child to the custody of the Department of Human Resources or a licensed child-placing agency, if the petition was filed pursuant to subsection (1) or (2) of Code Section 74-403(a). If the petition was filed pursuant to subsection (3) or (4) of Code Section 74-403(a), the child shall remain in the custody of the petitioner(s) if he is fit to have custody or the court may place the child with the Department of Human Resources for the purpose of determining whether or not a petition should be instituted under the Juvenile Court Code of Georgia.

#### SECTION 74-413 EFFECT OF DECREE OF ADOPTION.

(a) A decree of adoption, whether issued by a

court of this State or of any other jurisdiction shall have the following effect as to matters within the jurisdiction or before a court in this State:

(1) Except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the natural parent(s) of the adopted individual of all parental rights and responsibilities, and to terminate all legal relationships between the adopted individual and his relatives, including his natural parent(s), so that the adopted individual thereafter is a stranger to his former relatives for all purposes including inheritance and the interpretation or construction of documents, statutes, and instruments, whether executed before or after the adoption is decreed, which do not expressly include the individual by name or by some designation not based on a parent and child or blood relationship; and

(2) To create the relationship of parent and child between petitioner(s) and the adopted individual, as if the adopted individual were a child of natural bodily issue of petitioner(s), and he shall enjoy every right and privilege of a natural child of petitioner(s); and shall be deemed a natural child of petitioner(s) to inherit under the laws of descent and distribution in the absence of a will and to take under the provisions of any instrument of testamentary gift, bequest, devise or legacy, whether executed before or after the adoption is decreed, unless expressly excluded therefrom; and shall take by inheritance from relatives of the petitioner(s); and shall also take as a 'child' of the petitioner(s) under a class gift made by the will of a third person.



(b) Notwithstanding the provisions of subsection (a), if a parent of a child dies without the relationship of parent and child having been previously terminated the child's right of inheritance from or through the deceased is unaffected by the adoption.

#### SECTION 74-414 NOTICE OF ADOPTION.

Upon the entry of the decree of adoption, the clerk of the court granting the same shall forward a copy of said decree, together with the original of the investigation report filed with the court, to the Department of Human Resources. If there shall be any subsequent order or revocation of said adoption a copy of same in like manner shall be forwarded by the clerk to the Department of Human Resources. At any time after the entry of the decree of adoption, the clerk of the court granting the same shall, upon the request of the adopting parents, issue to said adopting parents a certificate of adoption, under the seal of the court, upon payment to him of the fee prescribed in Code Section 24-2727, relating to fees of clerks of the superior courts, as amended, which adoption certificate shall be received as evidence in any court or proceeding as primary evidence of the facts contained in said certificate. Said adoption certificate shall be in substantially the following form:

This is to certify \_\_\_\_\_ (names of adopting parents) \_\_\_\_\_ have obtained a decree of adoption in the Superior Court of \_\_\_\_\_ County, Georgia, on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, as shown by their records on \_\_\_\_\_ (full name of adopted child) \_\_\_\_\_.

Given under the hand and seal of said court, this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Clerk

#### SECTION 74-415 ADOPTION OF ADULT PERSONS.

(a) Adult persons may be adopted on giving written consent to such adoption. In such cases, adoption shall be by a petition duly verified and filed, together with two conformed copies, in the superior court in the county in which either the petitioner(s) or the adult to be adopted resides, setting forth the name, age and residence of petitioner(s), and of the adult to be adopted, the name by which the said adult is to be known, and his written consent to the adoption. The court may at any time, whether at term time or in vacation, assign the said petition for hearing, and after examining the petitioner(s) and the adult sought to be adopted, the court, if satisfied that there is no reason why said adoption should not be granted, shall enter a decree of adoption and change the name of the adopted adult, if requested. Thereafter the relation between such petitioner(s) and the adopted adult shall be, as to their legal rights and liabilities, the relation of parent and child.

(b) The provisions of Code Section 74-413, relating to the effect of a decree of adoption, and the provisions of Code Section 74-414, relating to notice of adoption, shall also apply to the adoption of adults.

#### SECTION 74-416 EFFECT OF FOREIGN JUDGMENT.

A decree of a court terminating the relationship of parent and child or establishing the relationship of parent and child by adoption issued pursuant to due process of law by a court of any other jurisdiction within or without the United States shall be recognized in this State and the rights and obligations of the parties as to matters within the jurisdiction of this State shall be determined as though the decree were

issued by a court of this State.

SECTION 74-417 RECORDS; WHERE KEPT; EXAMINATION.

The original petition, all amendments thereto, and all decrees or orders of any kind whatsoever, except the original investigation report of the investigating agent as provided for in Code Section 74-409, shall be recorded in a book kept for that purpose and properly indexed; and such books shall be part of the records of the court in each county that has jurisdiction over matters of adoption in that county. All of the records of the court granting the adoption (including the docket book) and of the Department of Human Resources that relate in any manner to the adoption shall be kept sealed and locked and can only be examined when, after written petition has been presented to the court having jurisdiction, the said court has entered an order permitting such examination. The records relating in any manner to adoptions shall not be open to the general public for inspection. Only the parties at interest in the adoption and their attorneys shall have the right to examine such records, and then only when good cause has been shown in writing to the court and an order entered thereon, as hereinbefore provided in this Section.

SECTION 74-418 UNLAWFUL ADVERTISEMENTS AND  
UNLAWFUL INDUCEMENTS; PENALTY.

(a) It shall be unlawful for any person or persons, organizations, corporation, hospital, or association of any kind whatsoever which has not been established as a licensed child-placing agency by the Department of Human Resources to advertise in any periodical, by television, by radio, or any other public medium, or by any private means including letters, circulars, handbills, and oral statements, that they will adopt children or arrange for, or cause children to

be adopted or placed for adoption or to directly or indirectly hold out inducements to parents to part with their children.

(b) Any person violating the provisions of this Section shall be guilty of a felony and shall be fined not more than \$10,000 or imprisoned for not more than ten (10) years, or both, in the discretion of the court."

Section 2. An Act approved March 27, 1941 (Ga. Laws 1941, p. 300), as amended, amending and revising the adoption laws, as amended, is hereby repealed in its entirety.

Section 3. In the event any Section, subsection, sentence, clause or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect, as if the Section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

Section 4. This Act shall become effective January 1, 1978.

Section 5. All laws and parts of laws in conflict with this Act are hereby repealed.



AFFIDAVIT OF SERVICE

I, CAROL ATHA COSGROVE, pursuant to Rule 33(3)(c) of the Rules of the Supreme Court of the United States, do hereby depose and say under oath that I have served the opposing parties with the foregoing BRIEF OF THE STATE OF GEORGIA IN SUPPORT OF APPELLEE'S MOTION TO DISMISS by depositing said copies in the United States Mail, in properly addressed envelopes, with adequate first class postage thereon, addressed to:

William L. Skinner  
Attorney at Law  
Suite 485  
One West Court Square  
Decatur, Georgia 30030

and in like fashion upon the Attorney for the Appellees, to wit:

Thomas F. Jones  
Attorney at Law  
1154 Citizens Trust Building  
75 Piedmont Avenue, N.E.  
Atlanta, Georgia 30303

This 12<sup>th</sup> day of May, 1977.

Carol Atha Cosgrove  
CAROL ATHA COSGROVE  
Assistant Attorney General

Sworn to and subscribed  
before me this 12<sup>th</sup> day  
of May, 1977.

Miss S. Davis  
NOTARY PUBLIC

Notary Public, Georgia, State of 1977  
My Commission Expires July 29, 1978